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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,045	09/26/2003	Stephen J. Brown	014030.0112N2US /	8048
60683 7590 05/21/2007 HEALTH HERO NETWORK, INC. 2000 SEAPORT BLVD. SUITE 400 REDWOOD CITY, CA 94063			EXAMINER CHEUNG, VICTOR	
			ART UNIT 3714	PAPER NUMBER
			MAIL DATE 05/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/673,045

Applicant(s)

BROWN ET AL.

Examiner

Victor Cheung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 48, 50-53, 54-62, 64-65, 67-79, 81-84 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

- 5) ☐ Claim(s) _____ is/are allowed.

- 6) ☒ Claim(s) 48, 50-53, 54-62, 64-65, 67-79, 81-84 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.

- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)

- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)

Paper No(s)/Mail Date. _____.

- 5) ☐ Notice of Informal Patent Application

- 6) ☐ Other: _____.

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DETAILED ACTION

1. Amendments to the specification and claims have been received 09/11/2006. Claims 50, 51, 54, 58, 61, 62, 64, 67, 71, 74, 75, 78, and 81 have been amended. Claims 20-47, 80, and 85 have been cancelled.

Claims 48, 50-52, 54-62, 64-65, 67-79, and 81-84 are pending in the application.

Claim Objections

2. Claims 48 and 62 are objected to because of the following informalities:

Claim 48, Line 6: "display device and audio speaker respectively" should be --audio speaker and display device respectively--.

Claim 62, Lines 6-7: "a display screen of a display device and audio speaker respectively" should be --an audio speaker and a display screen of a display respectively--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 75-79 and 81-84 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation “multiplayer” used in line 7 of claims 75 and 81, and line 2 of claims 78 and 83, renders the claims indefinite because it is unclear what the term multiplayer is referring to. As described on page 14 of the specification (page 7 of the specification amendments filed 10/17/2005), the term “multiplayer” is part of the name of the product “3DO Interactive Multiplayer,” trademarked to The 3DO Company. The language used in the claims should be used to describe the goods themselves, not the source of goods. A trademark or trade name does not identify or describe the goods associated with the trademark or trade name. It is unclear to the examiner what the term “multiplayer” refers to outside of the context of the “3DO Interactive Multiplayer” gaming device.

Accordingly, because the multiplayer is known only to refer to the 3DO Interactive Multiplayer, it is unclear as to what claims 76, 78, 82, and 83 would add to further limit independent claims 75 and 81, as the 3DO Interactive Multiplayer is a video game console with a CD-ROM drive and interchangeable compact discs for providing additional functionality to the multimedia processor.

Additionally as indicated in the specification, the applicant has used the term “multimedia processor” to mean a “modified CD-ROM multimedia interactive television video game console which comprises a microprocessor, hardware, and software” as on page 6 (page 5 of the specification amendments filed 06/17/2005). The ordinary meaning of a “multimedia processor” in the art is an integrated chip, a processor, that is able to perform multimedia duties – the microprocessor of the applicant’s specification. If the applicant has specifically defined the term “multimedia processor” to mean a “modified CD-ROM multimedia interactive television video game console which comprises a microprocessor, hardware, and software,” it is still unclear here as to what claims 76, 78, 82, and 83 would add to further limit independent claims 75 and 81.

For the purposes of this office action, the term “multimedia processor” is interpreted to be – a device capable of performing multimedia tasks--, and “multiplayer” is interpreted to be –video game console--.

Claims 76-79 and 81-84 are rejected as being dependent on claims 75 and 81.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 75-76, 81-82 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown (US Patent No. 5,307,263).

Re Claims 75-76, 81-82: Brown discloses an apparatus for interactively monitoring a blood glucose level and for interactively providing health-related information comprising a display device comprising a display screen and an audio speaker (Fig. 1; Col. 5, Lines 44-48), a multimedia processor coupled to provide a visual signal to the display screen and an audio signal to the audio speaker, wherein the multimedia processor comprises a multiplayer (Fig. 1; Col. 5, Lines 44-48), an interface device coupled to the multimedia processor (Col. 5, Lines 17-20), a glucose monitor

coupled to provide a signal representative of a blood glucose level to the interface device (Fig. 1, Reference No. 16), and a controller coupled to provide a control signal to the multimedia processor based on user input, so as to provide health related information in an interactive manner (Col. 9, Line 67-Col. 10, Line 5).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 48, 50-52, 54-56, 60, 62, 64, 65, 67-69, and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beckers (US Patent No. 5,019,974) in view of James et al. (US Patent No. 4,110,918).

Re Claims 48, 62, and 65: Beckers discloses a system and method for monitoring a physiological condition and for providing health-related information comprising a display device including a display screen (Figs. 1-2), an audio speaker (Fig. 3, Reference No. 38), a processor configured to provide audio and visual signals (Fig. 3, No. 30; Fig. 9, No. 100), at least one memory (Fig. 3, Nos. 32 and 34; Fig. 9, Nos. 102-103), at least one physiological data monitor configured to provide a signal representative of a user physiological parameter (Fig. 1, No. 60; Fig. 3, No. 58), an interface coupled between the processor and the physiological data monitor (Fig. 3, No. 56), a

program controller configured to receive an input from a user and provide a control signal to the processor based on the input, causing health related information to be provided to the user (Fig. 1; Fig. 3, No. 48; Col. 1, Lines 33-45), wherein the physiological parameter includes a blood glucose level and the physiological data monitor includes a blood glucose indicator (Col. 2, Lines 34-36).

However, Beckers does not specifically disclose the interface used to electrically isolate the physiological data monitor from the processor.

James et al. teach a biofeedback system comprising electrical and optical isolation between a biofeedback unit and a processor (Col. 3, Lines 5-13).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include electrical and optical isolation between the blood glucose monitor and the processor, thereby isolating each apparatus from each other, protecting each apparatus and the user from any malfunction.

Re Claims 50 and 64: Beckers additionally discloses the system and method of using the interface including a signal receiver for receiving the blood glucose level signal, a converter for converting the received signal into a form acceptable to the processor (Fig. 1, No. 56), and a multimedia controller for controlling the processor (Fig. 1, Nos. 56 and 42; the I2C Bus requires control of the processor for serial transmission).

Re Claims 51 and 52: Beckers discloses a blood glucose monitor adapted to measure a blood glucose level of a user and for generating a first signal in response to a measurement of blood glucose (Fig. 1, No. 60; Fig. 3, No. 58; Col. 2, Lines 34-36), a processor for receiving a second signal that is a function of the first signal (Fig. 3, No. 30), an interface for receiving the first signal and

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providing the second signal (Fig. 3, No. 56), a memory coupled to the processor for storing blood level data (Fig. 3, Nos. 32 and 34; Col. 3, Lines 40-50), and a display system coupled to the processor for displaying a representation of the blood glucose data, so as to provide health related information to the user in an interactive manner (Figs. 1 and 2).

However, Beckers does not specifically disclose the interface used to electrically isolate the physiological data monitor from the processor.

James et al. teach a biofeedback system comprising electrical and optical isolation between a biofeedback unit and a processor (Col. 3, Lines 5-13).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include electrical and optical isolation between the blood glucose monitor and the processor, thereby isolating each apparatus from each other, protecting each apparatus and the user from any malfunction.

Re Claims 54 and 67: Beckers additionally discloses the program controller enabling the user to make selections and to control the functions of the monitoring system (Col. 2, Lines 38-68).

Re Claims 55 and 68: Beckers additionally discloses that the program controller is hand-held (Fig. 1).

Re Claims 56 and 69: Beckers additionally discloses that the input from the user is from push button switches (Fig. 1; Col. 4, Lines 1-2).

Re Claims 60 and 73: Beckers additionally discloses that the system is configured to store information on at least one memory for later retrieval (Col. 3, Lines 40-50).

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9. Claims 57-59 and 70-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beckers (US Patent No. 5,019,974) in view of James et al. (US Patent No. 4,110,918), as applied to claims 48 and 62 above, and further in view of Brown (US Patent No. 5,307,263).

Re Claims 57 and 70: Beckers, as modified by James et al., teach the limitations of claims 48 and 62, as discussed above.

However, they do not specifically teach moving images.

Brown teaches a health monitoring system wherein the display comprises moving images (Col. 5, Line 68-Col. 6, Line 4).

Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to include moving images on the display to further enhance acceptance and use of the invention to those less interested in a less animated display.

Re Claims 58 and 71: Beckers additionally teaches comparing measurements of the blood glucose level with previously stored measurements of the blood glucose level (Col. 14, Lines 6-13).

Re Claims 59 and 72: Beckers additionally teaches that the information includes educational information (Col. 13, Lines 44-50).

10. Claims 61 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beckers (US Patent No. 5,019,974) in view of James et al. (US Patent No. 4,110,918), as applied to claims 48 and 62 above, and further in view of Brown (US Patent No. 5,307,263) and Hutchens (The News Tribune, June 25, 1994).

Beckers, as modified by James et al., teach the limitations of claims 48 and 62 above.

However, they do not specifically teach the display device being a television, and at least one removable memory.

Brown teaches the use a multimedia processor with at least one removable memory (Fig. 1, Reference Nos. 41-43; Col. 5, Lines 44-59).

Hutchens teaches that video game systems such as the GAME BOY™ of Brown can be played on a television screen (Abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include removable memories and a television display such that the processor is able to operate multiple different programs as necessary on a large display capable of displaying a large amount of information in a high resolution to a plurality of people.

11. Claims 48, 51-52, 57, and 59-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US Patent No. 5,307,263) in view of James et al. (US Patent No. 4,110,918).

Re Claim 48: Brown discloses a display device including a display screen, an audio speaker, a processor configured to provide audio and visual signals to the display device and audio speaker, at least one memory (Fig. 1; Col. 5, Lines 44-48), at least one physiological data monitor configured to provide a signal representative of a user physiological parameter (Fig. 1, Reference No. 16), an interface coupled between the processor and the physiological data monitor (Col. 5, Lines 17-20), a program controller configured to receive an input from a user and provide a control signal to the processor based upon the user's input, thereby to cause health related information to be provided to

the user based upon the signal representative of the physiological parameter and the control signal (Col. 9, Line 67-Col. 10, Line 5), wherein the physiological parameter includes a blood glucose level and the physiological data monitor includes a blood glucose indicator (Col. 7, Lines 33-37).

However, Brown does not specifically disclose the interface providing electrical isolation between the processor and the physiological data monitor.

James et al. teach a biofeedback system comprising optical isolation between a biofeedback unit and a processor (Col. 3, Lines 5-13).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include electrical and optical isolation between the blood glucose monitor and the processor, thereby isolating each apparatus from each other, protecting each apparatus and the user from any malfunction.

Re Claims 51-52: Brown discloses a blood glucose monitor adapted to measure a blood glucose level of a user and for generating a first signal in response to a measurement of blood glucose (Fig. 1, Reference No. 16), a processor for receiving a second signal that is a function of the first signal (Fig. 1, Reference No. 10), an interface coupled between the blood glucose monitor and the processor for receiving the first signal and providing the second signal (Col. 5, Lines 17-20), a memory coupled to the processor for storing blood level data (Col. 12, Lines 4-5), and a display system coupled to the processor for displaying a representation of the blood glucose level data, so as to provide health related information to the user in an interactive manner (Fig. 1, Reference No. 40).

However, Brown does not specifically disclose the interface electrically isolating the user from the processor.

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James et al. teach a biofeedback system comprising optical isolation between a biofeedback unit and a processor (Col. 3, Lines 5-13).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include electrical and optical isolation between the blood glucose monitor and the processor, thereby isolating each apparatus from each other, protecting each apparatus and the user from any malfunction.

Re Claim 57: Brown additionally discloses moving images (Col. 5, Line 68-Col. 6, Line 4).

Re Claim 59: Brown additionally discloses educational information (Col. 5, Lines 44-48).

Re Claim 60: Brown additionally discloses the system configured to store information on at least one memory for later retrieval (Col. 1, Lines 56-61; Col. 12, Lines 4-5).

12. Claim 61 rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US Patent No. 5,307,263) in view of James et al. (US Patent No. 4,110,918), as applied to claim 48 above, and further in view of Hutchens ("The News Tribune," June 25, 1994).

Brown, as modified by James et al., discloses the limitations of claim 48, discussed above.

Brown additionally discloses the processor has at least one removable memory (Col. 5, Lines 44-48).

However, Brown does not specifically disclose that the display device is a television display.

Hutchens teaches that video game systems such as the GAME BOY™ of Brown can be played on a television screen (Abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include removable memories and a television display such that the processor is able to operate multiple different programs as necessary on a large display capable of displaying a large amount of information in a high resolution to a plurality of people.

13. Claim 77 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US Patent No. 5,307,263) in view of Hutchens ("The News Tribune," June 25, 1994).

Brown discloses the limitations of claim 75, discussed above.

However, Brown does not specifically disclose the display being a television display.

Hutchens teaches that video game systems such as the GAME BOY™ of Brown can be played on a television screen (Abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a television display such that the information is displayed on large display capable of displaying a large amount of information in a high resolution to a plurality of people.

14. Claims 78 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US Patent No. 5,307,263) in view of Hutchens ("The News Tribune," June 25, 1994) and Nunziata ("Billboard," October 31, 1992).

Brown discloses the limitations of claims 75 and 81, as discussed above.

However, Brown does not specifically disclose a CD-ROM drive and CDs.

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Hutchens teaches that video game systems such as the GAME BOY™ of Brown can be played on a television screen (Abstract) through a SUPER NINTENDO ENTERTAINMENT SYSTEM™.

Nunziata teaches that video game consoles such as the SUPER NINTENDO ENTERTAINMENT SYSTEM™ can be adapted to use a CD-ROM and CDs.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a CD-ROM drive and interchangeable compact discs to provide additional functionality to the multimedia processor on a more flexible, larger storage format.

Double Patenting

15. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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16. Claims 48, 50-52, 54-59, 61, 75-79, and 81-84 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 3, 5, 6, 11, 12, 14, 15, and 17 of U.S. Patent No. 5,601,435. Claims 48, 50, 51, 52, 54, 59, 61, 75, 76, 77, 78, 79, 81, 82, 83, and 84 most closely relate to claims 1, 5, 5, 6, 1, 3, 2, 11, 12, 14, 15, 17, 11, 12, 15, and 17, respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because they do not claim the blood glucose monitor and glucose levels (as per claims 48, 51, 75), the controller being handheld (as per claim 55), having push buttons (as per claim 56), having moving images (as per claim 57), comparing measurements with previously stored measurements (as per claim 58), and storing information on memory (as per claim 60). However, all these features are disclosed in the same U.S. Patent No. 5,601,435: blood glucose monitor and glucose levels (Col. 3, Line 48), the system being handheld (Fig. 1), having push buttons (Fig. 2), having moving images (Col. 5, Lines 55-58), comparing measurements with previously stored measurements (Col. 5, Lines 65-67), and storing information on memory (Col. 6, Lines 4-5).

Response to Arguments

17. Applicant's arguments, see pages 11 and 12, filed 09/11/2006, with respect to the rejection of claims 48, 51, 52, 62 under 35 U.S.C. 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Beckers (US Patent No. 5,019,974) and James et al. (US Patent No. 4,110,918).

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18. Applicant's arguments with respect to claims 75 and 81 have been considered but are moot in view of the new ground(s) of rejection.

Please see the 35 U.S.C. 112, second paragraph, rejections in this office action regarding the terms "multimedia processor" and "multiplayer."

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Patton ("Electronics") discloses that CD-ROM based video game consoles comprise microprocessors for performing multimedia tasks.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Cheung whose telephone number is (571) 270-1349. The examiner can normally be reached on Mon-Thurs, 8-4:30, and every other Fri, 8-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VC

Victor Cheung
May 9, 2007



Kathleen Mosser
Primary Examiner
Art Unit 3714